

Appendix C

Agency Correspondence



© Flashes, Red Lodge, MT



United States
Department of
Agriculture

Forest
Service

Shoshone
National
Forest

808 Meadow Lane
Cody, WY 82414-4516
Voice: 307-527-6241
TTY: 307-578-1294
Fax: 307-578-1212

File Code: 1950-4
Date: April 16, 2002

Bert McCauley
Project Engineer
Central Federal Lands Highway Division, Federal
Highway Admin
555 Zang Street, Room 259
Lakewood, CO 80228

Dear Bert

We have been asked to review the proposal for a work camp necessary for the Beartooth Highway project in the context of Section 4f. I am providing the following information to help you discern if the proposed Fox Creek work camp may require 4f analysis:

We view the work camp use of Fox Creek Campground as a temporary occupancy of this site even though the difficult high elevation construction environment of the Beartooth project may require occupancy of up to six years. The improvements proposed are minor and will not dramatically deter from future use of the Fox Creek campground by the public. At the end of the use of the facility as a construction camp, we anticipate the campground will provide developed camping opportunity equal to or better than what the public enjoys now.

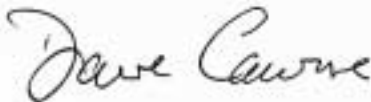
We have looked at potential locations for a work camp to include Lily Lake, Pilot Creek and others. Fox Creek has significant advantages as a work camp. First, there is a power line at the site, we do have a dependable source of water and the area is already developed as a camping facility. Other locations would require new development of raw land, do not have a proven water source or would not be near commercial power.

We currently have a surplus of developed campground site capacity on the Beartooth Plateau and lands west toward Cooke City, Montana. Our statistics gathered annually and last analyzed in 2000, show that average use for the sites range from 18% to 80% occupancy during the core use season (Memorial Day to Labor Day). Along the highway 212 corridor, overall average developed site use seldom exceeds 50% and peak use on major summer holidays (Independence Day, Labor Day) does not use all available capacity. The use of Fox Creek as a work camp should not impact overall ability of the public to find developed camping locations along the highway corridor. At most, those traditional users of Fox Creek will be inconvenienced and forced to move up or down the highway a few miles to other sites. Anecdotal observation of the use of developed sites on the Gallatin National Forest just west of Fox Creek shows that use of those facilities may be much less than the developments on the Shoshone. Overall, the public will not lose opportunity to camp on either Forest based on use of Fox Creek for construction purposes.



In review of the criteria at 23 CFR 771.135(p) 7 and discussion with your environmental staff, we agree that the Fox Creek work camp aspect of the Beartooth Highway does not constitute a Section 4f use. If you have any questions about our position on this issue, please contact Gary Reynolds of my staff.

Sincerely,

A handwritten signature in cursive script that reads "Dave Cawne".

for REBECCA R. AUS
Forest Supervisor



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
4000 Airport Parkway
Cheyenne, Wyoming 82001

ES-61411
sl/W.17/wy4839/sl

July 13, 2001

Mr. Richard J. Cushing
Central Federal Lands Highway Division
555 Zang Street
Mail Room 259
Lakewood, CO 80228

Dear Mr. Cushing:

Thank you for your letter regarding the proposed reconstruction of the Beartooth Highway, US 212, in Park County, Wyoming.

In accordance with section 7(c) of the Endangered Species Act of 1973, as amended (Act), my staff has determined that the following threatened or endangered species, or species proposed for listing under the Act, may be present in the project area.

Listed and Proposed Species

<u>Species</u>	<u>Status</u>	<u>Expected Occurrence</u>
Bald Eagle (<i>Haliaeetus leucocephalus</i>)	Threatened	Found throughout state
Grizzly bear (<i>Ursus arctos horribilis</i>)	Threatened	Montane forests
Gray wolf (<i>Canis lupus</i>)	Experimental	Greater Yellowstone Ecosystem
Canada lynx (<i>Lynx canadensis</i>)	Threatened	Montane forests

Bald eagle: While habitat loss still remains a threat to the bald eagle's full recovery, most experts agree that its recovery to date is encouraging. Bald eagles are believed to live 30 years or longer in the wild, and even longer in captivity. They mate for life and build huge nests in the tops of large trees near rivers, lakes, marshes, or other wetland areas. Nests are often re-used year after year. Although bald eagles may range over great distances, they usually return to nest within 100 miles of where they were raised.

Bald eagles normally lay two to three eggs once a year and the eggs hatch after about 35 days. The young eagles are flying within 3 months and are on their own about a month later. However, disease, lack of food, bad weather, or human interference can kill many eaglets; sometimes only about half will survive their first year.

A disturbance-free buffer zone of 1-mile should be maintained around eagle nests. Activity within 1-mile of an eagle nest may disturb the eagles and result in "take." If a disturbance-free buffer zone of 1-mile is not practicable, then the activity should be conducted outside of the nesting season which is from Feb 15 - Aug 15.

Grizzly bear: In 1975, the grizzly bear was listed as threatened under the Act. In the conterminous 48 States, only five areas in mountainous regions, national parks and wilderness areas of Washington, Idaho, Montana, and Wyoming currently contain either self-perpetuating or remnant populations. Because of their opportunistic feeding habits, grizzly bears have been attracted to carrion, waste products of construction camps, recreational camps, and residential areas making them vulnerable to human-caused mortality.

Gray wolf: All wolves within Wyoming are now considered part of the nonessential experimental population. Although such wolves remain listed and protected under the Act, additional flexibility is provided for their management under the provisions of the final rule and special regulations promulgated for the nonessential experimental population on November 22, 1994 (59 FR 60252). Requirements for interagency consultation under section 7 of the Act differ based on the surface ownership and/or management responsibility where the animals occur. On any unit of National Park System or National Wildlife Refuge System lands, wolves that are part of the experimental population are considered a threatened species and the full provisions of section 7 apply. Thus, the Fish and Wildlife Service (Service) and any other action agency is prohibited from authorizing, funding or carrying out an action within a National Park or National Wildlife Refuge that is likely to jeopardize the continued existence of the gray wolf. Formal section 7 consultation is required if a Federal action within these areas "may affect" the gray wolf.

Additional management flexibility is provided for managing wolves existing outside units of the National Park or National Wildlife Refuge System (e.g. Forest Service lands). Wolves designated as nonessential experimental in these areas are treated as proposed rather than listed. Two provisions of section 7 apply to Federal actions outside National Park or National Wildlife Refuges: (1) section 7(a)(1), which states all Federal agencies shall utilize their authorities to carry out programs for the conservation of listed species; and (2) section 7(a)(4), which requires Federal agencies to confer informally with the Service on actions that are likely to jeopardize the continued existence of the species.

Under all management jurisdictions, the action agency needs to assess the potential impact of any proposed action on the gray wolf. The Service recommends that Federal Agencies analyze impacts on nonessential populations, along with other populations of fish and wildlife, when

complying with the requirements of the National Environmental Policy Act. Any protective measures in addition to those outlined in the final rule or additional review procedures, are at the discretion of the Federal Action Agency.

Canada lynx: In Wyoming, the lynx lives in subalpine/coniferous forests of mixed age and structural classes. Mature forests with downed logs and windfalls provide cover for denning sites, escape, and protection from severe weather. Early successional forest stages provide habitat for the lynx's primary prey, the snowshoe hare. The home range of a lynx can be 5 to 94 square miles. They are capable of moving extremely long distances in search of food. Lynx are highly dependent on snowshoe hare, but when hare populations drop they also prey on other small mammals and birds.

In compliance with Section 4 (b) (3) (B) of the Act, the Service identified that significant threats to the lynx were (1) loss and/or modification of habitat; (2) past commercial harvest (trapping), which is partially responsible for the extremely small lynx population; (3) inadequate regulatory mechanisms to protect lynx and their habitat; and (4) other factors such as increased human access into suitable habitat and human-induced changes in habitat allowing other species (e.g., bobcats and coyotes) to move into lynx habitat and compete with them. Examples of human alteration of forests include loss of and conversion of forested habitats through urbanization, ski area and other developments; fragmentation that leads to isolation of forested habitats by highways or other major construction; and certain timber harvesting practices and fire suppression measures.

Migratory Birds

Please recognize that consultation on listed species may not remove your obligation to protect the many species of birds, raptors, and eagles protected under the Migratory Bird Treaty Act (MBTA) and Bald and Golden Eagle Protection Act (BGEPA).

The MBTA, 16 U.S.C. 703, enacted in 1918, prohibits the taking of any migratory birds, their parts, nests, or eggs except as permitted by regulations and does not require intent to be proven. Section 703 of the Act states, "Unless and except as permitted by regulations ... it shall be unlawful at any time, by any means or in any manner, to ... take, capture, kill, attempt to take, capture, or kill, or possess ... any migratory bird, any part, nest, or eggs of any such bird..." The BGEPA, 16 U.S.C. 668, prohibits knowingly taking, or taking with wanton disregard for the consequences of an activity, any bald or golden eagles or their body parts, nests, or eggs, which includes collection, molestation, disturbance, or killing.

Work that could lead to the take of a migratory bird or eagle, their young, eggs, or nests (for example, if you are going to erect new well sites, roads, or power lines in the vicinity of a nest), should be coordinated with our office before any actions are taken. Removal or destruction of such nests, or causing abandonment of a nest could constitute violation of the above statutes. Removal of nests or nest trees is prohibited, but may be allowed once young have fledged and/or

a permit has been issued. In either case, timing is a significant consideration and you need to allow for this in your project planning. We also recommend the project area be surveyed for raptor nests and roost areas.

To minimize effects on nesting raptors and the possibility of "take" under the Migratory Bird Treaty Act, protective/mitigation measures may be necessary. Any analysis of the project should address potential adverse impacts including habitat loss or degradation, nest abandonment, and electrocution/collision hazards to raptors and specifically outline all measures that will be implemented to minimize adverse effects to these species. Your planning document should describe proposed protective measures including, but not limited to: possible timing restrictions for construction, establishment of buffer zones around raptor nests, proper raptor-proofing of power lines, and protection of nest and roost trees. Projects that create electrocution/collision hazards should include a monitoring program to detect problem areas.

Consultation

Section 7(c) of the Act requires that a biological assessment be prepared for any Federal action that is a major construction activity to determine the effects of the proposed action on listed and proposed species. If a biological assessment is not required (i.e., all other actions), the lead Federal agency is responsible for review of proposed activities to determine whether listed species will be affected. We would appreciate the opportunity to review any such determination document. If it is determined that the proposed activities may affect a listed species, you should contact this office to discuss consultation requirements. If it is determined that any Federal agency program or project "is likely to adversely affect" any listed species, formal consultation should be initiated with this office. Alternatively, informal consultation can be continued so we can work together to determine how the project could be modified to reduce impacts to listed species to the "not likely to adversely affect" threshold. If it is concluded that the project "is not likely to adversely affect" listed species, we should be asked to review the assessment and concur with the determination of not likely to adversely affect.

For those actions where a biological assessment is necessary, it should be completed within 180 days of receipt of a species list, but can be extended by mutual agreement between the lead agency and the Service. If the assessment is not initiated within 90 days of receipt of a species list, the list of threatened and endangered species should be verified with me prior to initiation of the assessment. The biological assessment may be undertaken as part of the agency's compliance of section 102 of the National Environmental Policy Act (NEPA), and incorporated into the NEPA documents. The Service recommends that biological assessments include:

1. a description of the project;
2. a description of the specific area potentially affected by the action;
3. the current status, habitat use, and behavior of threatened and endangered species in the project area;
4. discussion of the methods used to determine the information in item 3;

5. direct and indirect impacts of the project to threatened and endangered species, including impacts of interrelated and interdependent actions;
6. an analysis of the effects of the action on listed and proposed species and their habitats including cumulative impacts from Federal, State, or private projects in the area;
7. measures that will reduce or eliminate adverse impacts to threatened and endangered species;
8. the expected status of threatened and endangered species in the future (short and long term) during and after project completion;
9. determination of "is likely to adversely affect" or "is not likely to adversely affect" for listed species;
10. determination of "is likely to jeopardize" or "is not likely to jeopardize" for proposed species;
11. Alternatives to the proposed action considered, a summary of how impacts of those alternatives on listed and proposed species would differ from the proposed action, and the reasons for not selecting those alternatives.
12. citation of literature and personal contacts used in the assessment.

A Federal agency may designate a non-Federal representative to conduct informal consultation or prepare biological assessments. However, the ultimate responsibility for section 7 compliance remains with the Federal agency, and written notice should be provided to the Service upon such a designation. We recommend that Federal agencies provide their non-Federal representatives with proper guidance and oversight during preparation of biological assessments and evaluation of potential impacts to listed species.

Section 7(d) of the Act requires that the Federal agency and permit or license applicant shall not make any irreversible or irretrievable commitment of resources which would preclude the formulation of reasonable and prudent alternatives until consultation on listed species is completed.

We will work with the lead Federal agency in the section 7 consultation process. The analysis of project impacts must assess direct impacts of the project, as well as those impacts that are interrelated to or interdependent with the proposed action. Impacts to listed species on non-Federal lands must be evaluated along with such impacts on Federal lands. Any measures that are ultimately required to avoid or reduce impacts to listed species will apply to Federal as well as non-Federal lands.

Thank you for the opportunity to review the proposed work. Please keep this office informed of any developments or decisions concerning this project.

Richard Cushing

6

If you have any questions please contact Sarah Laughlin of my staff at the letterhead address or phone (307) 772-2374, extension 33.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael M. Long". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael M. Long
Field Supervisor
Wyoming Field Office

cc: Director, WGFD, Cheyenne, WY
Nongame Coordinator, WGFD, Lander, WY



U.S. Department
of Transportation
Federal Highway
Administration

Central Federal Lands Highway Division
555 Zang Street
Mail Room 259
Lakewood, CO 80228

JUN 27 2001

Refer To: HPD-16.5 (WY-04:jcorwin)

Mr. Michael Long
Field Supervisor
U.S. Fish and Wildlife Service
4000 Morrie Avenue
Cheyenne, Wyoming 82001

Dear Mr. Long:

As you know, the Federal Highway Administration (FHWA), in cooperation with the Shoshone National Forest, the National Park Service, and the Wyoming Department of Transportation, is proposing to reconstruct a portion of the Beartooth Highway, US 212, from, approximately, the Clay Butte turnoff, east, to the Wyoming/Montana border. The project is located within the Black Pyramid Mountain, Deep Lake, Beartooth Butte, and Muddy Creek 7.5 minute U.S. Geological Survey quadrangles (see enclosed map). Through your representative, Mr. Terry Root, your agency has been participating as a cooperating agency in this project.

The FHWA is in the process of drafting its Draft Environmental Impact Statement and would like an update on the threatened or endangered species (as well as proposed species) that may be affected by the proposed project. The environmental aspects of the proposal are being coordinated by Ms. Jennifer Corwin. If you have any questions or need further information, please contact Ms. Corwin at 303-716-2097.

Sincerely yours,

Richard J. Cushing
Environmental Planning Engineer

Enclosure

cc: Richard Trenholme, ERO Resources, 1842 Clarkson Street, Denver, CO 80218



United States Department of the Interior

NATIONAL PARK SERVICE

PO Box 168
Yellowstone National Park
Wyoming 82190



IN REPLY REFER TO:

D18(YELL)

OCT 08 1999

James Keeley
Project Development Engineer
Central Lands Highway Division
555 Zang Street, Room 259
Denver, Colorado 80228

Dear Mr. Keeley,

This letter is in response to your request to the National Park Service to participate as a cooperating agency (in accordance with the Council on Environmental Quality (CEQ) regulation 1501.6) in the development of the Beartooth Highway reconstruction project and corresponding environmental impact statement (EIS).

The National Park Service (NPS) is pleased to accept your request and agrees to provide the Federal Highway Administration (FHWA) with the following assistance:

- ♦ Provide meaningful and early input on issues of concern.
- ♦ Provide assistance to the lead agency, as requested, during development of the purpose and need.
- ♦ Participate in public involvement activities.
- ♦ Provide assistance in the development of alternatives.
- ♦ Assist in the identification of any environmental impacts as well as measures to minimize any adverse impacts that may result from the highway improvement.
- ♦ Attend scoping meetings; SEE team meetings, plan reviews, coordination meetings and field reviews, as requested.
- ♦ Review pre-draft and pre-final environmental documents.
- ♦ Assist the lead agency in determining appropriate and practicable mitigation, including "all practicable measures to minimize harm" and cooperate in the application of principles for integration of NEPA and Section 404 Permits, where appropriate.

We look forward to working with the FHWA and to our role as a cooperating agency on the Beartooth Highway project.

Sincerely,

A handwritten signature in cursive script, appearing to read "Micheal V. Finely".

for Micheal V. Finely
Superintendent

cc: Craig Holsopple, Federal Highways
cc: Tim Hudson
cc: Sarah Creachbaum



United States
Department of
Agriculture

Forest
Service

Shoshone
National
Forest

808 Meadow Lane
Cody, WY 82414-4516

File Code: 1500/1950 HPD-16.5

Date: November 8, 1999

James W. Keeley, P.E.
Federal Highway Administration
Central Federal lands Highway Division
555 Zang Street, Room 259
Denver, Colorado 80228

Dear Mr. Keeley:

Your agency has requested that the USDA Forest Service become a Cooperating Agency in the development of a Environmental Impact Statement for reconstruction of an 18.6 mile segment of the Beartooth Highway. I accept your invitation to become a Cooperating Agency in the development of the EIS.

If you have further questions or concerns, please contact Brent Larson of my staff.

Sincerely;


(f) REBECCA AUS
Forest Supervisor

BL/iw

cc. Brent Larson



WYOMING

DEPARTMENT OF STATE PARKS & CULTURAL RESOURCES STATE HISTORIC PRESERVATION OFFICE

Barrett Building
2301 Central Ave.
Cheyenne, WY 82002

(307) 777-7697
FAX (307) 777-6421

August 3, 1999

James W. Keeley, P.E.
Project Development Engineer
Federal Highway Administration
Central Federal Lands Highway Division
555 Zang Street, Room 259
Lakewood, CO 80228

RE: Beartooth Highway, Wyoming Forest Highway 4, Park County; SHPO
#0598KLK042

Dear Mr. Keeley:

Our staff has received information concerning the National Register eligibility of several properties. Thank you for providing us the opportunity to comment.

We have reviewed the property documentation and find that it meets the Secretary of the Interior's Standards for Archaeology and Historic Preservation (48 FR 44716-42). Properties 48PA2303, 48PA2404, the Long Lake Construction Camp, 48PA2305, the Top of the World Store, and 48PA2311, the Main Hi-Line Trail, do not meet the criteria of eligibility for inclusion in the National Register of Historic Places (NRHP). Properties 48PA2306, the Long Lake Bridge, 48PA2307, the Eastern Little Bear Creek Bridge, 48PA2308, the Western Little Bear Creek Bridge, 48PA2309, the Beartooth Lake Bridge, and 48PA2310, the Beartooth Highway, meet the criteria of eligibility for the NRHP.

We did note in the report it is stated, "widening the pavement on the existing alignment should not be considered an adverse effect" (p. 35). We cannot concur with such a determination. Widening a roadway impacts its integrity of design, materials, workmanship, feeling and association. Additionally, it is stated that Historic American Engineering Record recordation should be conducted if the bridges are to be replaced (p. 34). If it determined that replacing the bridges is necessary, staff of the Federal Highway Administration will have to consult with our office to determine an appropriate form of mitigation.

Jim Geringer, Governor



John T. Keck, Director

This letter should be retained in your files as evidence of our concurrence determination of eligibility for these properties.

Please refer to SHPO project control number 0598KLK042 on any future correspondence pertaining to these sites eligibility. If you have any questions contact me at 307-777-6694.

Sincerely,

A handwritten signature in cursive script that reads "Todd Thibodeau".

Todd Thibodeau, Historian
State Historic Preservation Office



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
4000 Morrie Avenue
Cheyenne, Wyoming 82001

ES-61411
tar/W.17/WY2024.tar (BearCoop.ltr)

November 18, 1998

James W. Keeley, Project Development Engineer
Federal Highway Administration
Central Federal Lands Highway Division
555 Zang Street, Room 259
Lakewood, CO 80228

Dear Mr. Keeley:

Thank you for your letter of October 8 requesting the U.S. Fish and Wildlife Service (Service) to become a cooperating agency in the development of an Environmental Impact Statement (EIS) for the reconstruction of the Beartooth Highway.

We would be pleased to participate as a cooperating agency by providing technical assistance on fish and wildlife related matters. The Service will do its best to meet the expectations outlined in your letter. However, given present staffing limitations, there may be instances where our participation will be limited. Also, as per the October 20 telephone discussion between Terry A. Root of my staff and Richard Cushing of your agency, we will not be able to write portions of the document as your agency will be consulting with this office on the proposed project pursuant to section 7 of the Endangered Species Act of 1973, as amended. In addition, as per the aforementioned telephone conversation, we will not "adopt" the final environmental document.

We appreciate your efforts to ensure the conservation of endangered, threatened, and candidate species and migratory birds and look forward to participating as a cooperating agency in the development of the EIS. If you have any questions on this subject, please contact Terry A. Root of my staff at the letterhead address or phone 307-587-2216.

Sincerely,

Michael M. Long
Field Supervisor
Wyoming Field Office

cc: Director, WGFD, Cheyenne, WY
Non-game Coordinator, WGFD, Lander, WY
D. Ruiter, EPA



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
215 NORTH 17TH STREET
OMAHA, NEBRASKA 68102-4978

REPLY TO
ATTENTION OF

October 23, 1998

Wyoming Regulatory Office
2232 Dell Range Blvd., Suite 210
Cheyenne, Wyoming 82009

Mr. James W. Keeley, P.E.
Federal Highway Administration
Central Federal Lands Highway Division
555 Zang Street, Room 259
Lakewood, Colorado 80228

Dear Mr. Keeley:

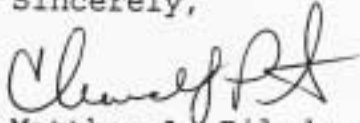
This is in reference to your October 8, 1998 correspondence requesting the Corps of Engineers, Omaha District, Wyoming Regulatory Office become a cooperating agency relative to the Environmental Impact Statement (EIS) being prepared for the improvement of US Highway 212, Beartooth Highway.

The Corps of Engineers regulates the discharge of dredged and fill material into waters of the United States (including wetlands) as authorized primarily by section 404 of the Clean Water Act (33 U.S.C. 1344). A site visit and review of the information provided to date indicates that the project will be located in waters of the U.S. Therefore, authorization is required in accordance with the referenced statute. Because we have jurisdiction by law, we agree to be included as a cooperating agency for the preparation of the EIS in accordance with 40 CFR Part 1501.6 of the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act. This determination was previously made in correspondence dated September 29, 1998. We are interested in ensuring the document meets our information needs to comply with the requirements of our regulatory program.

It is noted that although our primary responsibility is associated with aquatic resources, our regulations require we assess impacts to factors relative to the public interest including, but not limited to, fish and wildlife, historic, scenic, and recreational values, property ownership, floodplain management, water supply and conservation, mineral needs, navigation, economics, and mitigation as well as others.

If you have any questions regarding this matter, please contact Chandler Peter at (307) 772-2300. Be sure to reference file number 199840159.

Sincerely,


for Matthew A. Bilodeau
Program Manager
Wyoming Regulatory Office

WYOMING
GAME AND FISH DEPARTMENT

Jim Geringer, Governor



John Baughman, Director

October 26, 1998

WER 9028
Federal Highway Administration, Shoshone
National Forest, Wyoming Department of
Transportation, Forest Service and National
Park Service
Scoping Document
Beartooth Highway (US 212), Park Road
Project/Reconstruction Project
SIN: 98-140

Wyoming State Clearinghouse
Office of Federal Land Policy
ATTN: Julie Hamilton
Herschler Building, 3SW
Cheyenne, WY 82002

Dear Ms. Hamilton:

The staff of the Wyoming Game and Fish Department has reviewed the scoping document for the Beartooth Highway, Park Road Reconstruction Project. We offer the following comments.

Terrestrial Considerations:

All of the area for the proposed highway reconstruction is at high elevation, and primarily occurs in mountain goat (Beartooth Herd Unit), bighorn sheep (Clark's Fork Herd Unit), elk and mule deer (Clark's Fork Herd Units) spring-summer-fall range. A small portion of bighorn sheep crucial winter range is delineated near the highway next to the Montana border, but no recent winter use by sheep has been documented in this area. Although some displacement or disturbance of wildlife may occur during construction, there should be no significant negative impacts to wildlife. This highway normally has a high traffic volume and associated tourist activity during the few months it is open and wildlife have acclimated to this type of disturbance.

Alpine vegetation types on the Beartooth Highway are typically very sensitive to surface disturbances and due to the harsh environment and sterile soils, may take many decades to recover. Numerous university studies of the flora and ecotypes of the Beartooth have been done and only recently the Custer National Forest declared the Line Creek Plateau a Research Natural Area. Because of the high national importance of the

Beartooth Plateau and its environs, we recommend that the area of disturbance be kept to an absolute minimum for road reconstruction and that consideration be given to the difficulty in reclaiming or revegetating disturbed areas after reconstruction. Where possible, construction staging areas should be put in existing pullouts or developments and borrow areas should be limited to sites previously used for road construction, such as the gravel pit area just inside the Montana border.

This area is within the Shoshone National Forest grizzly bear closure area. Therefore, special efforts should be made to educate construction workers about living and working in grizzly country. Garbage or foods in areas used for worker housing or at construction sites should comply with all bear closure guidelines.

Future environmental analysis of the project should also consider potential impacts to lynx and wolverine.

Aquatic Considerations:

Numerous fisheries resources exist within the corridor of this highway. However, without design plans to show areas of potential alignment changes, we are not able to make specific comments. Once proposed alignments are available for review, we will provide detailed comments.

We do offer the following general comments for your consideration:

1. Bridge abutment placement should be designed in a manner that does not significantly alter stream velocities or channel stability of upstream or downstream reaches.
2. All stream banks disturbed as a result of this project should be returned to their original or better degree of stability and contour. Suitable techniques for bank stabilization include, though are not limited to, the use of large angular rock (greater than 2 feet in one dimension) or wire enclosed riprap structures. Riprap material should be from a nonstream source and be free of fine sediments.
3. Any riparian canopy or bank stabilizing vegetation removed as a result of construction activities should be reintroduced and protected from grazing until well established.
4. Equipment should be serviced and fueled away from streams and riparian areas. Equipment staging areas should be at least 150 feet from riparian areas.
5. Normal Wyoming Department of Transportation construction specifications for control of soil erosion and water pollution should be strictly followed.
6. The area of disturbance should be minimized to the greatest extent possible to minimize sedimentation and channel instability impacts to fish habitat.

7. Accepted best management practices should be implemented to ensure that all sediments and other pollutants are contained within the boundaries of the work area. Disturbed areas that are contributing sediment to surface waters as a result of project activities should be promptly revegetated to maintain water quality.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tom Collins".

BILL WICHERS
DEPUTY DIRECTOR

BW:TC:as
cc: USFWS



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
4000 Morrie Avenue
Cheyenne, Wyoming 82001

ES-61411
TAR/W.17/WY2022.tar (BearHwy.ltr)
ER# 98/0592

October 22, 1998

Richard Cushing, Environmental Planning Engineer
Federal Highway Administration
555 Zang Street, Room 259
Lakewood, Colorado 80228

Dear Mr. Cushing:

Thank you for your letter of September 22 regarding the proposal to improve a portion of Wyoming Forest Highway 4 (US 212), Beartooth Highway, Project # HPD-16.5, in Park County, Wyoming. This letter also responds to the Notice of Intent to prepare an environmental impact statement (Statement) for this project published in the Federal Register on September 3, 1998

The Statement should clearly identify the purpose and need for the project, as well as a full range of alternatives to the proposal. One alternative that should be addressed is a "3R" project (i.e., resurface, restore, and rehabilitate) since such a project was previously proposed for this stretch of highway and only dropped because additional money became available by passage of the Transportation Efficiency Act 21st Century (TEA-21).

The Scoping Statement states that part of the justification for the project is that the subject stretch of highway is narrower than the connecting segments of the highway. This raises the issue of possible piecemealing of this project by building or upgrading adjacent segments to higher standards, then using those segments to justify the current proposal. The Statement should thoroughly address this issue, and fully disclose whether construction of the connecting segments has precluded any alternatives for the present segment.

In addition to direct impacts to fish and wildlife and their habitats caused by the project, the Statement should thoroughly evaluate secondary impacts to fish and wildlife and their habitats. Secondary impacts could include additional recreational facilities or other visitor-oriented facilities (on private or Federal lands) induced by improving access to the area.

The Statement should include a complete discussion of all measures proposed to fully compensate for all unavoidable impacts to fish and wildlife habitat. The mitigation plan should include goals and objectives, success criteria, a monitoring plan to determine if success criteria have been met and to detect problems with mitigation measures, and contingency plans to be implemented should any or all of the mitigation measures fail.

In accordance with section 7(c) of the Endangered Species Act of 1973, as amended (Act), the Fish and Wildlife Service has determined that the following threatened or endangered species may be present in the project area:

<u>Species</u>	<u>Status</u>	<u>Expected Occurrence</u>
Bald eagle (<i>Haliaeetus leucocephalus</i>)	Threatened	Winter resident, migrant
Peregrine falcon (<i>Falco peregrinus</i>)	Endangered	Migrant
Gray wolf (<i>Canis lupus</i>)	Experimental; Non-essential (Formerly endangered)	Potential resident
Grizzly bear (<i>Ursus arctos horribilis</i>)	Threatened	Resident

Section 7(c) of Act requires that Federal agencies proposing major construction actions, such as the proposed project, complete a biological assessment to determine the effects of the proposed actions on listed and proposed species. For those actions where a biological assessment is necessary, it should be completed within 180 days of initiation, but can be extended by mutual agreement between your agency and the Service. If the assessment is not initiated within 90 days, the list of threatened and endangered species should be verified with this office prior to initiation of the assessment. The biological assessment may be undertaken as part of the agency's compliance of section 102 of the National Environmental Policy Act (NEPA), and incorporated into the NEPA documents. The Service recommends that biological assessments include:

1. a description of the project;
2. a description of the specific area potentially affected by the action;
3. the current status, habitat use, and behavior of threatened and endangered species in the project area;
4. discussion of the methods used to determine the information in item 3;
5. direct and indirect impacts of the project to threatened and endangered species;
6. an analysis of the effects of the action on listed and proposed species and their habitats including cumulative impacts from Federal, State, or private projects in the area;
7. measures that will reduce/eliminate adverse impacts to threatened and endangered species;
8. the expected status of threatened and endangered species in the future (short and long term) during and after project completion;
9. determination of "is likely to adversely affect" or "is not likely to adversely affect" for listed species;
10. determination of "is likely to jeopardize" or "is not likely to jeopardize" for proposed species;
11. citation of literature and personal contacts used in the assessment.

If it is determined that any agency program or project "is likely to adversely affect" any listed species, formal consultation should be initiated with this office. If it is concluded that the project "is not likely to adversely affect" listed species, the Service should be asked to review the assessment and concur with the determination of not likely to adversely affect.

A Federal agency may designate a non-Federal representative to conduct informal consultation or prepare biological assessments. However, the ultimate responsibility for section 7 compliance remains with the Federal agency, and written notice should be provided to the Service upon such a designation. I recommend that Federal agencies provide their non-Federal representatives with proper guidance and oversight during preparation of biological assessments and evaluation of potential impacts to listed species.

Section 7(d) of Act requires that the Federal agency and permit or license applicant shall not make any irreversible or irretrievable commitment of resources which would preclude the formulation of reasonable and prudent alternatives until consultation on listed species is completed.

Also, please recognize that consultation on listed species does not obviate protection afforded the many species of birds, raptors, and eagles by the Migratory Bird Treaty Act (MBTA) and Bald Eagle Protection Act. The MBTA, 16 U.S.C. 703, enacted in 1918, prohibits the taking of any migratory birds, their parts, nests, or eggs except as permitted by regulations and does not require intent to be proven. Section 703 of the Act states, "Unless and except as permitted by regulation...it shall be unlawful at any time, by any means or in any manner, to ...take, capture, kill, attempt to take, capture, or kill, or possess ...any migratory bird, any part, nest, or eggs of any such bird..." The Bald Eagle Protection Act, 16 U.S.C. 66dd, prohibits knowingly taking, or taking with wanton disregard for the consequences of an activity, any bald or golden eagles or their body parts, nests or eggs, which includes collection, molestation, disturbance, or killing.

To minimize impacts on nesting raptors and the possibility of "take" under the MBTA, protective/mitigation measures are often necessary. The Statement should address potential adverse impacts including habitat loss or degradation, nest abandonment, and specifically outline measures that will be implemented to avoid or minimize adverse effects to these species.

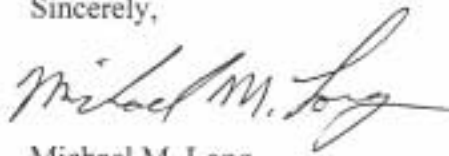
The Canada lynx (*Lynx canadensis*) has been proposed for listing as a threatened species pursuant to the Act. The project area is within the historical range of this species. Because this species may be listed during the life of this project, we recommend impacts of the proposed project on the Canada lynx, and mitigation measures to avoid or minimize impacts to the lynx, be addressed in the Statement.

These scoping comments are made pursuant to the National Environmental Policy Act, the Endangered Species Act and Fish and Wildlife Coordination Act. Please keep this office informed of any developments or decisions concerning this project.

We appreciate your efforts to ensure the conservation of endangered, threatened and candidate species. We look forward to working with your agency and reviewing the environmental impact

statement for this proposal. If you have any questions on this subject, please contact Terry A. Root of my staff at the letterhead address or phone 307-587-2216.

Sincerely,

A handwritten signature in cursive script that reads "Michael M. Long". The signature is written in dark ink and is positioned above the printed name.

Michael M. Long
Field Supervisor
Wyoming Field Office

cc: Director, WGFD, Cheyenne, WY
Non-game Coordinator, WGFD, Lander, WY
BFA (ERT), FWS, Washington, D.C.
OEPC, Washington, D.C.



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
215 NORTH 17TH STREET
OMAHA, NEBRASKA 68102-4978

September 29, 1998

Wyoming Regulatory Office
2232 Dell Range Blvd., Suite 210
Cheyenne, Wyoming 82009

Mr. Richard Cushing
Environmental Planning Engineer
Attn: Environmental Section (HPD 16.5)
Federal Highway Administration, CFLHD
555 Zang Street, Room 259
Lakewood, Colorado 80228

Dear Mr. Cushing:

This is in response to a letter dated July 30, 1998, which we received from Mr. James W. Keeley, P.E., Project Development Engineer, of your agency, your letter dated August 14, 1998, and the interagency scoping meeting and project tour sponsored by your agency which I attended on September 10, 1998, at the Pilot/Index Peak Overlook on the Beartooth Highway. I regret the delay in responding to your July correspondence on this matter.

The aforementioned correspondence and the meeting concern your agency's proposed reconstruction of the Beartooth Highway, i.e., U.S. Highway 212, and the EIS which you are preparing on the project. This is your project identification No. HPD-16.5. The project is located in northwestern Wyoming. Based on the information provided, we understand that the Federal Highway Administration is the lead agency on this project and responsible for compliance with the National Environmental Policy Act (1969). The U.S. Forest Service, the National Park Service, and the Wyoming Department of Transportation are cooperating agencies.

The Corps of Engineers regulates the discharge of dredged or fill material into Wyoming waterbodies and wetlands as authorized primarily under Section 404 of the Clean Water Act (33 U.S.C. 1344). Based on our September 10, 1998, meeting and field review, it is evident that your proposed reconstruction work will result in activities that will require some form of Corps authorization. As requested by your agency, we will also participate as a cooperating agency to ensure that the EIS you are preparing meets our needs to render a permit decision pursuant to our authority under Section 404 of the Clean Water Act.

In reference to your request for comments on the Scoping Statement included in your August 14, 1998, letter on the Beartooth Highway Project, generally speaking, efforts should be made to

avoid and minimize impacts to waters of the U.S., and in particular, wetland areas, due to road reconstruction efforts. Consideration should be given to the development of a set of project alternatives having different project design speeds and standards that avoid and minimize wetland impacts while complying with current highway safety requirements. Also, consideration should be given to mitigating for unavoidable impacts to water bodies and wetlands by restoring previously impacted areas, where possible, in conjunction with the current project.

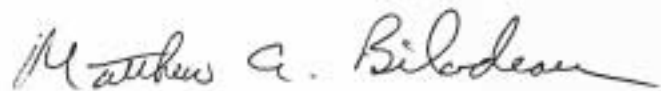
It was clear to me from our meeting and project tour that your agency is already considering project construction options to avoid and minimize impacts to areas subject to regulation by the Corps. Your identification of potential restoration sites for previously impacted areas is also noted. We appreciate your efforts and look forward to working with you on this project.

I understand that the wetland delineation for the project corridor was completed this summer and that we will be asked to review and verify that delineation during the 1999 field season. Please schedule that review with us as far as you can in advance of the proposed site visit dates.

Finally, as requested in the July 30, 1998, letter from Mr. Keeley of your agency, Mr. Chandler Peter of my staff and Mr. Michael Gilbert, our wetlands staff specialist in the Omaha District Office, have reviewed the Montana Wetland Field Evaluation Method and forms that your environmental consultant, ERO Resources Corporation, proposes using on the Beartooth Highway Project. We find them an acceptable method of assessing project impacts on wetland functions for this project.

Chandler Peter will be the project manager for our office on this project. If you have any questions on these comments please contact Chandler Peter or me at (307) 772-2300 and reference file No. 199840159.

Sincerely,



Matthew A. Bilodeau
Program Manager
Wyoming Regulatory Office

Copy Furnished:

Omaha District Regulatory Office

THE STATE



OF WYOMING



JIM GERINGER
GOVERNOR

Department of Environmental Quality

Herschler Building • 122 West 25th Street • Cheyenne, Wyoming 82002

ADMINISTRATION (307) 777-7758 FAX 777-7882	ABANDONED MINES (307) 777-6145 FAX 634-0799	AIR QUALITY (307) 777-7391 FAX 777-5616	INDUSTRIAL SITING (307) 777-7368 FAX 777-6937	LAND QUALITY (307) 777-7756 FAX 634-0799	SOLID & HAZARDOUS WASTE (307) 777-7752 FAX 777-5973	WATER QUALITY (307) 777-7781 FAX 777-5973
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September 16, 1998

Mr. Richard Cushing
Environmental Planning Engineer
Attn: Environmental Section (HPD 16.5)
Federal Highway Administration, CFLHD
555 Zang Street, Room 259
Lakewood, CO 80228

RE: Wyoming Park Road Project (PRP) 4-1(2) Beartooth Highway

Dear Mr. Cushing:

Chris Abernathy of the Water Quality Division attended the interagency scoping meeting and field review for the proposed project held on September 10, 1998 and provided the following comments.

Several potential impacts to water quality may be associated with this project. Some possible impacts include:

- 1) Disturbance to aquatic habitat during removal and replacement of culverts at various stream crossings within project area;
- 2) Construction activities associated with bridge replacement at Beartooth Lake;
- 3) Impacts to wetlands associated with the realignment of the highway away from Little Bear Creek;
- 4) Increased sediment transport into surface waters from disturbed areas.

While the DEQ lists most of the lakes and streams surrounding the Beartooth Highway as Class 2 waters of the state, their existing quality is very high. This higher quality is the standard that must be maintained when working in and around these waters. The DEQ asks that cumulative impacts to surface water resources be addressed during the development of the proposed project EIS.

I have also included a map indicating DEQ stream classification for the project area. Thank you for the opportunity to comment.

Sincerely,

Dennis Hemmer
Director
Department of Environmental Quality

DH/CA/pjb 82673.ltr
Attachment



Beartooth Highway Project

Stream Classification Map

3 Miles



Class 1 Waters
Class 2 Waters

Beartooth Highway

Proposed Road

State Lands

US Forest Service, City of Yellowstone, Park and Outdoor Re-

US Forest Service

1979 - 1980





State Engineer's Office

Herschler Building, 4-E Cheyenne, Wyoming 82002
(307) 777-7354 FAX (307) 777-5451
seoleg@missc.state.wy.us

JIM GERINGER
GOVERNOR

GORDON W. FASSETT
STATE ENGINEER

September 9, 1998

Richard Cushing, Environmental Planning Engineer
Federal Highway Administration, CFLHD
Attn: Environmental Section, (HPD-16.5)
555 Zang Street, Room 259
Denver, CO 80228

RE: Beartooth Highway, Park Road Project (State ID No. 98-140)

Dear Mr. Cushing:

Temporary water rights permits will be required to obtain construction water needed for this project. The application forms can be obtained from our office by the owner or contractor.

If you should have any questions concerning this matter, please feel free to contact our Surface Water Section at the number listed below.

Sincerely,

David S. Benner

DAVID S. BENNER
Safety of Dams Engineer

DSB/db

DIVISION DIRECTOR

Karyl Denison Robb, Ph. D.

WYOMING

DIVISION OF CULTURAL RESOURCES

State Historic Preservation Office

Barrett Building

2301 Central Ave.

Cheyenne, WY 82002

(307) 777-7697

FAX (307) 777-6421

September 9, 1998

Mr. Rodney Vaughn
Federal Highway Administration
1916 Evans Avenue
Cheyenne, WY 82001

RE: Beartooth Highway, Park Road Project Scoping Document (State Identifier Number: 98-140); SHPO #0598KLK042

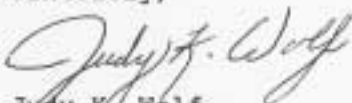
Dear Mr. Vaughn:

Richard Currit of our staff has received information concerning the aforementioned project. Thank you for allowing us the opportunity to comment.

Management of cultural resources on Federal Highway Administration (FHWA) projects is conducted in accordance with Section 106 of the National Historic Preservation Act and Advisory Council regulations 36 CFR Part 800. These regulations call for survey, evaluation and protection of significant historic and archeological sites prior to any disturbance. Provided the FHWA follows the procedures established in the regulations, we have no objections to the project. Specific comments on the project's effect on cultural resource sites will be provided to the FHWA when we review the cultural resource documentation called for in 36 CFR Part 800.

Please refer to SHPO project control number #0598KLK042 on any future correspondence dealing with this project. If you have any questions contact Richard Currit at 307-777-5497 or me at 307-777-6311.

Sincerely,



Judy K. Wolf
Deputy State Historic Preservation Officer
for
John T. Keck
State Historic Preservation Officer

JTK:RLC:jh

cc: Julie Francis, Wyoming Department of Transportation



DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Park County, Wyoming

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Park County, Wyoming.

FOR FURTHER INFORMATION CONTACT:

Richard Cushing, Environmental Planning Engineer, Federal Highway Administration, 555 Zang Street, Lakewood, Colorado, 80228, telephone 303-716-2138.

[[Page 47082]]

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with Shoshone National Forest, the National Park Service, and the Wyoming Department of Transportation, will prepare an environmental impact statement (EIS) for a proposed improvement of U.S. Highway 212, Beartooth Highway. U.S. Highway 212 begins at the northeast corner to Yellowstone National Park, Park County, Montana, and proceeds northeasterly for 68.7 miles to the town of Red Lodge, Montana, in Carbon County. The section proposed for improvement begins 7.1 miles east of the junction of WY 296 (Chief Joseph Highway) and proceeds in a northeasterly direction for 18.6 miles ending at the Wyoming/Montana state line.

Alternatives under consideration include (1) the "no build," (2) reconstruction of the roadway to applicable standards, and (3) other alternatives that will be developed during the scoping process.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. Interagency scoping meetings and public scoping meetings will be held in the project area. Public hearings will also be held. Information on the time and place of public scoping meetings and public hearings will be provided in the local news media.

The draft EIS will be available for public and agency review and comment at the time of the hearing.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above, (Catalog of Federal Domestic Assistance Program Number, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 19, 1998.
Larry C. Smith,
Division Engineer, FHWA, Denver, CO.
[FR Doc. 98-23805 Filed 9-2-98; 8:45 am]
BILLING CODE 4910-22-M



U.S. Department
of Transportation
**Federal Highway
Administration**

Central Federal Lands
Highway Division

555 Zang Street
P.O. Box 25246
Denver, Colorado 80225-0246

AUG 14 1998

In Reply Refer To:
HPD-16.5

See Addressee List:

Subject: U.S. Highway 212, Beartooth Highway (Wyoming Forest Highway 4)

The Federal Highway Administration (FHWA), in cooperation with Forest Service, the National Park Service, and Wyoming Department of Transportation, is proposing to reconstruct a section of the Beartooth Highway (U.S. 212). The section of the Beartooth Highway proposed for reconstruction begins 7.1 miles east of the junction of U.S. 296 (Chief Joseph Highway) at MP 24.5 and proceeds in a northeasterly direction, ending at the Wyoming/Montana state line at MP 43.1.

This letter confirms the arrangements to hold an interagency scoping meeting and field review for the subject project. The interagency scoping meeting is scheduled for September 10 at 9:00 a.m. at the Pilot/Index Peak Overlook on the Beartooth Highway (between U.S. 296 and Clay Butte). The field review will take place following the interagency meeting. The purpose of this meeting, given the design of this proposal and its environmental impacts, is to coordinate with agencies which may have concerns with any phase of this project through its developmental stages. Enclosed is a copy of the scoping statement for the Beartooth Highway.

Also, should you wish to attend, public meetings will be held at the below listed dates and locations from 6:00 p.m. to 8:00 p.m.

Sep. 8	Tuesday	Cody, Wyoming (Cody Auditorium, 1240 Beck Avenue)
Sep. 9	Wednesday	Cooke City, Montana (Cooke City Firehall, Main Street)
Sep. 9	Wednesday	Billings, Montana (Clarion Motel, 1223 Mullowney Lane)
Sep. 10	Thursday	Red Lodge, Montana (Rock Creek Resort, HC 49)

If you have any questions or require additional information, please contact Messrs. Richard Cushing, Environmental Planning Engineer, at (303)716-2138, or Craig Holsopple, Highway Engineer, at (303)716-2107.

Sincerely yours,

James W. Keeley, P.E.
Project Development Engineer

Enclosure

Addressees:

Mr. Rand Herzberg
District Ranger
Beartooth Ranger District
HC 49, Box 3420
Red Lodge, MT 59068

Mr. Tim Hudson
Chief of Maintenance
Yellowstone National Park
P.O. Box 168
Yellowstone National Park, WY
82190-0168

Mr. Gary Brown
District Supervisor
Wyoming Game & Fish Department
2820 State Highway 120
Cody, WY 82414

Mr. Terry A. Root, Biologist
C/O Bureau of Land Management
P.O. Box 518
Cody, WY 82414

Mr. Michael M. Long
Field Supervisor
Fish & Wildlife Service
4000 Morrie Avenue
Cheyenne, WY 82001

Mr. Matthew Bilodeau
U.S. Army, Corps of Engineers
2232 Dell Range Boulevard, Ste. 210
Cheyenne, WY 82009
Attn: Mr. Chandler Peter
Project Manager

Mr. Chris Abernathy
Wyoming DEQ
Water Quality Division
Herschler Building
Cheyenne, WY 82001

Mr. Charley Johnstone
Chairman
Park County Commissioners
1002 Sheridan Avenue
Cody, WY 82414
Attn: Mr. Tim Ware

cc:

Mr. Victor Strube, P.E.
District Engineer
Wyoming Department of Transportation
P.O. Box 461
Basin, WY 82410

Ms. Sarah Creachbaum
Planning
Yellowstone National Park
P.O. Box 168
Yellowstone National Park, WY
82190-0168

Mr. Brent Larson
District Ranger
Shoshone National Forest
203 A Yellowstone Avenue
Cody, WY 82414

Mr. Bob Rossman
NEPA Coordinator
Shoshone National Forest
808 Meadow Lane
Cody, WY 82414

bc: R. Cushing/C. Holsopple

yc: reading file

Central file - WY FH 4, Beartooth Highway

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